Not intended for publication

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

William Hobson and
Emma Louise Hobson, **Case No. 01-11367**

Debtors. **Chapter 13**

MEMORANDUM OPINION AND ORDER RE MOTION TO CONFIRM CITY OF DYERSBURG'S ENFORCEMENT OF CONDEMNATION ORDER IS NOT SUBJECT TO AUTOMATIC STAY

The Court conducted a hearing on the City of Dyersburg's motion to confirm that their enforcement of a condemnation order is not subject to the automatic stay on September 27, 2001. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The debtors in this case, William and Emma Hobson, are the owners and landlords of several pieces of property located on Meeks Street in Dyersburg, Tennessee. On September 7, 2000, the City of Dyersburg, ("City"), notified the Debtors by mail that they would be inspecting the property to conduct Life Safety and Code Inspections. Inspections of the properties were conducted on September 15, 2000, during which the inspectors from Dyersburg Code Enforcement and several other governmental entities found an extensive list of code violations. The Debtors were informed by certified mail of the code violations on their properties and they were told that the violations needed to be remedied immediately in order to halt the condemnation of these properties.

The Debtors appealed the determination that they were in violation of the code to the Sub-Standard Housing Board, ("Board"). The appeal was heard by the Board on October 13, 2000. On

October 26, 2000, the Board issued a Condemnation Order which ordered the Debtors to remove all structures on their property within sixty or one hundred and twenty days, depending on the particular piece of property.

The Debtors filed the instant Chapter 11 case on March 28, 2001. The City had scheduled the demolition of the structures on the Debtors' property for August 21, 2001; however, counsel for the Debtor requested that the City delay the demolition actions until this Court could consider whether the City's enforcement of the condemnation order is stayed by 11 U.S.C. § 362.

II. CONCLUSIONS OF LAW

A. 11 U.S.C. § 362(a)

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
> (4) any act to create, perfect, or enforce any lien against property of the estate;
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

When a debtor files a bankruptcy petition, the protections of 11 U.S.C. § 362 are automatically triggered and all pending actions against the debtor are immediately stayed. 11 U.S.C. § 362(a). In essence, the automatic stay can be likened to a moat that secludes the debtor from his creditors and offers him temporary protection from his financial demons. The legislative history of § 362 indicates that such

relief is necessary in order to give the debtor time to catch his breath and get a better handle on his situation. H.R. Rep. No. 95-595, at 340 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6296.

In order to proceed with a cause of action against the debtor in a nonbankruptcy forum, a practitioner must seek relief from the automatic stay in bankruptcy court. 11 U.S.C. § 362(d). Any person or entity who persists in an action against the debtor without first seeking relief from the automatic stay faces potentially severe repercussions. Subsection (h) of § 362 provides, "An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(h).

B. 11 U.S.C. § 362(b)(4)

Despite the breadth and severity of the automatic stay, Congress chose to create some exceptions to the rule. Section 362(b)(4) of the Bankruptcy Code provides that:

> (b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, *does not operate as a stay–*
>
> . . . .
>
> (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

11 U.S.C. § 362(b)(4) (emphasis added). As the legislative history of the Code explains, "[t]hus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." S. Rep. No. 95-989, at 52 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838.

In the case of *Javens v. City of Hazel Park (In re Javens),* 107 F.3d 359 (6th Cir. 1997), the Sixth Circuit was faced with the issue of whether or not § 362(b)(4) allowed municipal officials to demolish condemned buildings without first seeking relief from the automatic stay. The Sixth Circuit held that

unless a debtor could prove that a governmental unit was acting in bad faith, the automatic stay would not prohibit a municipal authority from such an exercise of its regulatory power. *Id.* at 361.

In *Javens*, the debtor owned several pieces of property in Hazel Park and Royal Oak, Michigan. After finding numerous building and fire code violations in the debtor's buildings, city officials concluded that the buildings were a public nuisance and a danger to public health, safety and welfare. The debtor was given time to correct the violations, but failed to do so. As a result, the buildings were condemned and city judges issued immediate demolition orders. *Id*. at 362.

In an attempt to forestall the demolition of his buildings, Javens filed a voluntary bankruptcy petition. Hazel Park promptly filed a motion "for a determination that the automatic stay of § 362(a) does not apply to the litigation initiated by the City of Hazel Park to correct building code violations or obtain orders permitting demolition of properties in which the debtors or debtors' estate may have an interest." *Id.* at 363. The Bankruptcy Court granted the motion and held that "[t]he automatic stay does not prevent government from the exercise of police or regulatory power . . . Hazel Park's effort to require adherence to building codes or demolish property that may pose a threat to the safety and health of the community is clearly within the police or regulatory power of government. The exercise of this power is not barred by the operation of 11 U.S.C. Section 362." *Id.* at 363-364. In affirming this decision, the district court noted that it is "'axiomatic' that the cities' actions enforcing its building and fire codes 'are related to matters of public safety and health, and thereby well within their respective police and regulatory powers.'" *Id*. at 364 (quoting *In re Javens*, No. 94-CV-71142-DT (E.D. Mich. Feb. 28. 1995).

The Sixth Circuit affirmed the district court ruling. *Id*. at 371. In so doing, the Sixth Circuit noted state and local officials attempting to enforce their police or regulatory powers would be presumed to be acting in good faith; however, if a debtor could rebut this presumption with concrete evidence of bad faith, a court could prevent a governmental unit from attempting to exercise its police power under § 362. *Id*. at 366.

The case at bar is almost identical to *Javens*. The City of Dyersburg found numerous code violations in the debtors' buildings. The debtors were given time to correct the violations, but failed to do so. The buildings were condemned and then the debtors filed for bankruptcy relief. The debtors did not make any allegations or offer any proof that the City officials were acting in bad faith. Therefore, the Court finds that in condemning and seeking to demolish the buildings, the City of Dyersburg is well within the boundaries of § 362(b)(4). The demolition of the buildings is not stayed by the filing of the debtors' bankruptcy petition.

III. ORDER

It is therefore **ORDERED** that the City of Dyersburg's motion to confirm that its enforcement of the condemnation order is not subject to the automatic stay is **GRANTED.**

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: October 10, 2001